

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of : Confirmation No. 8735
Yoshihiro OHMIYA et al. : Attorney Docket No. 2008_0957
Serial No. 10/537,971 : Group Art Unit 1656
Filed June 9, 2005 : Examiner Suzanne M. Noakes
MONITOR PROTEIN FOR MEASURING
PROCESSING OF PROTEIN : Mail Stop: AF

DECLARATION UNDER 37 C.F.R. § 1.132

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, ASHITAKA Emiko, the undersigned, a citizen of Japan, residing at c/o Department of Medical Chemistry of Kansai Medical University, 10-15, Fumizono-cho, Moriguchi-shi, Osaka 570-8506, Japan, do hereby declare:

1. That I am an inventor of the above-identified application.
2. That I graduated from the Kyoto Institute of Technology, Faculty of Textile Science in 1986, and received a Doctor of Philosophy degree from the Graduate School of Kyoto Institute of Technology in 1994.
3. I hereby attest that it is my professional opinion and belief that the term "Cypridina noctiluca" as shown in the specification and in the claims as filed as well as the formerly pending claims is a typographical error and should instead recite "Vargula hilgendorfi". I further attest that it is my professional opinion and belief that a person of skill in the art would understand both that the term "Cypridina noctiluca" is an error and that this term should properly read "Vargula hilgendorfi". Thus, it is my professional opinion and belief that the amendments to the specification and claims replacing the erroneous "Cypridina noctiluca" term with "Vargula hilgendorfi" is not new matter but is instead a typographical error obvious to one skilled in the art.

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I base my professional opinion and belief on the numerous instances in the specification wherein SEQ ID NOS: 1 and 2 are proffered as embodiments of *Cypridina noctiluca*. However, as noted by the Examiner and others of skill in the art, SEQ ID NOS: 1 and 2 are directed towards *Vargula hilgendorfi* sequences.

For instance, page 4, lines 31-32 of the specification indicates that the monitor protein of any of the above embodiments [1] to [12] can be SEQ ID NO: 1. It is noted that [9] is *Cypridina noctiluca* but SEQ ID NO: 1 is directed towards *Vargula hilgendorfi*. Further, it is noted on page 13, lines 30-31, VL is indicated as *Cypridina noctiluca* when such abbreviation "VL" appears to be *Vargula hilgendorfi* luciferase. Such further reasoning can be applied to the use of Vluc as shown, for instance, on page 16, lines 13-15, of the specification. I note that a person of skill in the art would understand Vluc to refer to *Vargula hilgendorfi* luciferase.

Thus, for the above-noted reasons, I hereby attest that it is my professional opinion and belief that "*Cypridina noctiluca*" should read as "*Vargula hilgendorfi*" throughout the claims and specification and that such correction of this typographical error is readily apparent to a person of skill in the art and therefore, is not new matter.

Finally, I, an inventor of the above-identified application, hereby attest that this error was made without any deceptive intent.

I further declare that all statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this application or any patent issuing thereon.

(Date) February 24, 2009

(Signature of Declarant) Emiko Ashizaka